

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAIME MEZA-VEGA,

Defendant.

Case No.: 13cr04544 DMS

**ORDER DENYING DEFENDANT'S
MOTION FOR REDUCTION OF
SENTENCE UNDER 18 U.S.C.
§ 3582(c)(2) AND U.S.S.G.
AMENDMENT 782**

This case is before the court on Defendant Jaime Meza-Vega's ("Defendant" or "Meza-Vega") motion to reduce his sentence under 18 U.S.C. § 3582(c)(2) and Amendment 782 to the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines"). After reviewing the parties' briefs, the record, and the relevant legal authority, the Court **DENIES** Defendant's motion.

I.

BACKGROUND

In December 2013, the United States Coast Guard attempted to intercept and inspect a panga-style boat 140 nautical miles southwest of Point Loma, California. When Coast Guard cutter "Active" instructed the panga crewmen to prepare for an inspection, the panga fled with the cutter giving chase. The Coast Guard fired two warning shots at the vessel to no effect. After further pursuit, the crew of the "Active" successfully shot and disabled the

1 panga's engines. Coast Guard personnel took Meza-Vega (the pilot of the vessel) and a
 2 codefendant (the passenger) into custody and discovered 2,278.84 kilograms (5,023.47
 3 pounds) of marijuana aboard the panga. After the Coast Guard transferred the defendants
 4 to the San Diego Marine Task Force, Meza-Vega told officers he had accepted a payment
 5 of \$10,000 to smuggle drugs into the United States, but said he was not sure what type of
 6 drugs he was smuggling. He also admitted to throwing a GPS unit and a cell phone
 7 overboard during the pursuit.

8 On December 31, 2013, the Government filed an information with the Court
 9 charging Jaime Meza-Vega and the codefendant with possessing marijuana on a vessel
 10 with intent to distribute in violation of 46 U.S.C. 70503 and 70506. (ECF No. 15.) A
 11 superseding information was filed on February 6, 2014 to correct a clerical error. (ECF
 12 No. 23.) The Court accepted Mr. Meza-Vega's plea of guilty to possession of marijuana
 13 on a vessel with intent to distribute on February 26, 2014. (ECF No. 34.) On April 25,
 14 2014, the Court sentenced Defendant to a term of imprisonment of 70 months, with a 3-
 15 year period of supervised release to follow. (ECF No. 46.)

16 Defendant filed a pro se motion seeking an unspecified sentence reduction under
 17 Amendment 782 to the United States Sentencing Guidelines on July 31, 2018. (ECF No.
 18 53.) The Court appointed Federal Defenders as counsel for Mr. Meza-Vega on May 31,
 19 2019. (ECF No. 56.) The Government responded in opposition to the pro se motion on
 20 June 3, 2019. (ECF No. 58.) Federal Defenders filed a supplemental motion and reply to
 21 the Government's opposition on June 4, 2019, seeking a 13-month reduction from 70 to 57
 22 months. (ECF No. 59.) On September 16, 2019, the Court stayed this case pending
 23 resolution of *United States v. Ocegueda*, 778 F. App'x 510 (9th Cir. 2019) (unpublished).
 24 (ECF No. 63.) The Ninth Circuit issued its memorandum opinion in *Ocegueda* on
 25 September 25, 2019.

26 Defendant was released from custody on July 19, 2019. (ECF No. 59 at 2.)
 27 However, this does not render his motion moot, as he is still serving supervised release.
 28 See *Mujahid v. Daniels*, 413 F.3d 991, 994-995 (9th Cir. 2005) (first citing *Gunderson v.*

1 *Hood*, 268 F.3d 1149, 1153 (9th Cir. 2001); then citing *United States v. Verdin*, 243 F.3d
 2 1174, 1178 (9th Cir. 2001)) (“The possibility that the sentencing court would use its
 3 discretion to reduce a term of supervised release . . . [is] enough to prevent the petition
 4 from being moot.”).

5 **II.**

6 **DISCUSSION**

7 Generally, a court cannot modify a sentence after imposition. *See Dillon v. United*
 8 *States*, 560 U.S. 817, 824 (2010) (citing 18 U.S.C. 3582(b)). However, under 18 U.S.C. §
 9 3582(c)(2), a defendant may move for a reduction if he was sentenced based on a
 10 sentencing range that was subsequently lowered by a retroactive amendment to the
 11 Guidelines. In 2014, the United States Sentencing Commission (“Commission”) approved
 12 U.S.S.G. Amendment 782, which lowered the sentencing ranges for most drug offenses by
 13 two levels. The Commission also voted to make those changes retroactive in U.S.S.G.
 14 Amendment 788.

15 Deciding whether a defendant is entitled to a sentence reduction under 18 U.S.C. §
 16 3582(c)(2) requires a two-step process. First, the court must apply U.S.S.G. § 1B1.10(a)
 17 to determine whether the defendant is eligible for a reduction. *Dillon*, 560 U.S. at 826 (“A
 18 court must first determine that a reduction is consistent with § 1B1.10”). If the
 19 defendant is eligible, the court moves to the second step of the analysis, which is itself two-
 20 pronged. The court must first calculate the “amended guideline range that would have been
 21 applicable to the defendant if the amendment[] . . . had been in effect at the time the
 22 defendant was sentenced.” U.S.S.G. § 1B1.10(b)(1). The court then applies U.S.S.G. §
 23 1B1.10(b)(2) to limit the extent of the allowable reduction. Finally, the court makes a
 24 discretionary determination as to what, if any, portion of the reduction allowable under §
 25 1B1.10(a) and (b) is warranted in the particular defendant’s case. *Dillon*, 560 U.S. at 826-
 26 27; *see Koon v. United States*, 518 U.S. 81, 113 (1996). This exercise of discretion is
 27 governed by 18 U.S.C. § 3553(a). *See* 18 U.S.C. § 3582(c)(2).
 28 ///

1 **A) Eligibility: 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10(a)**

2 “Under [18 U.S.C.] § 3582(c)(2), a defendant is eligible for a sentence reduction if
 3 . . . the [original] sentence is based on a sentencing range that has subsequently been
 4 lowered by the Sentencing Commission’ and . . . ‘such a reduction is consistent with
 5 applicable policy statements issued by the Sentencing Commission.’” *United States*
 6 *v. Pleasant*, 704 F.3d 808, 810 (9th Cir. 2013) (footnote omitted) (citing *United States v.*
 7 *Wesson*, 583 F.3d 728, 730 (9th Cir. 2009)), *overruled on other grounds by United States*
 8 *v. Davis*, 825 F.3d 1014 (9th Cir. 2016). Because U.S.S.G. § 1B1.10 is the “primary
 9 applicable policy statement” for sentence reductions, the Court turns to that Guideline to
 10 determine Defendant’s eligibility. *Id.* (internal quotation marks omitted).

11 U.S.S.G. § 1B1.10(a)(1) indicates that a defendant is eligible for a reduction if the
 12 “guideline range applicable to that defendant has subsequently been lowered as a result
 13 of an amendment to the Guidelines Manual listed in subsection (d).” Guidelines
 14 Application Note 1(A) defines the § 1B1.10(a)(1) applicable guideline range as “the
 15 guideline range that corresponds to the offense level and criminal history category
 16 determined pursuant to § 1B1.1(a) . . . determined before consideration of any departure
 17 provision in the Guidelines Manual or any variance.” Amendment 782 is listed in
 18 § 1B1.10(d) and is therefore a qualifying retroactive amendment.

19 Defendant’s original base offense level was 32 before a 3-level downward
 20 adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1. After the adjustment,
 21 Defendant’s total offense level was 29. Defendant was in Criminal History Category III.
 22 With a total offense level of 29 and a criminal history category of III, Defendant’s original
 23 applicable guideline range, determined pre-departure per Application Note 1(A), was
 24 108-135 months. *See* U.S.S.G. Ch. 5, Pt. A. If Amendment 782 were in force at the time
 25 of Defendant’s sentencing, the base offense level would have been 30. After the 3-level
 26 § 3E1.1 adjustment, Defendant’s total offense level would have been 27. The post-
 27 amendment applicable guideline range for total offense level 27 at criminal history
 28 category III is 87-108 months. *See id.*

1 Amendment 782 would have lowered Defendant's U.S.S.G. § 1B1.10(a) applicable
 2 guideline range from 108-135 to 87-108 months if it were in force at time of sentencing.
 3 Since Amendment 782 is a qualifying retroactive amendment under U.S.S.G.
 4 § 1B1.10(d), Defendant is **eligible** for a reduction under 18 U.S.C. § 3582(c)(2), and the
 5 Court may move into the discretionary prong of the sentence reduction analysis.

6 **B) Discretion: U.S.S.G. § 1B1.10(b) and 18 U.S.C. § 3553(a)**

7 1. Calculating the amended guideline range under U.S.S.G. § 1B1.10(b)(1) and
 8 limiting the extent of the allowable reduction under U.S.S.G. § 1B1.10(b)(2)

9 After determining that a defendant is eligible for a sentence reduction under 18
 10 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10(a), the court must calculate the defendant's
 11 amended guideline range. The amended guideline range is the recommended range that
 12 would have been applicable to Defendant if Amendment 782 were in effect at the time of
 13 sentencing. U.S.S.G. § 1B1.10(b)(1). Because an 18 U.S.C. § 3582(c)(2) sentence
 14 reduction is not a de novo resentencing, *Dillon*, 560 U.S. at 825, 827, the Guidelines
 15 mandate that the Court calculate Defendant's amended guideline range by "substitut[ing]
 16 only" the changes made by Amendment 782, leaving "all other guideline application
 17 decisions *unaffected*." U.S.S.G. § 1B1.10(b)(1) (emphasis added). Even in the
 18 discretionary phase, "[c]ourts generally may 'not reduce the defendant's term of
 19 imprisonment under 18 U.S.C. § 3582(c)(2) . . . to a term that is less than the minimum of
 20 the amended guideline range.'" *Dillon*, 560 U.S. at 827 (quoting U.S.S.G.
 21 § 1B1.10(b)(2)(A)).

22 The parties dispute the meaning of the requirement that the Court leave all guideline
 23 application decisions not implicated by Amendment 782 "unaffected" in calculating the
 24 amended guideline range. The Government argues U.S.S.G. § 1B1.10(b)(1) requires the
 25 Court to ignore all departures in arriving at the amended guideline range. Under the
 26 Government's approach, the amended guideline range would be the same as the 87-108
 27 month post-amendment applicable guideline range (calculated *supra*, Part II, Section A),
 28 since both would exclude departures. If the Government's interpretation of the Guidelines

1 is correct, the Court cannot reduce Defendant's sentence, since even Defendant's original,
 2 70-month sentence is less than the low end of the Government's proposed amended
 3 guideline range. *See U.S.S.G. § 1B1.10(b)(2)(A).*

4 Defendant argues the Court should include all original departures in determining
 5 the amended guideline range. This approach would calculate the amended guideline range
 6 by subtracting all departures from the post-amendment applicable guideline range of 87-
 7 108 months (calculated *supra*, Part II, Section A). If Defendant had the benefit of
 8 Amendment 782 at the time of sentencing, his total offense level would have been 27 after
 9 the 3-level § 3E1.1 adjustment. If the Court were to implement Defendant's approach and
 10 apply a 4-level § 5K3.1 fast track departure to arrive at a final total offense level of 23,
 11 criminal history category III, Defendant's amended guideline range would be 57-71
 12 months. This would allow the Court to proceed and apply the 18 U.S.C. § 3553(a)
 13 discretionary factors to evaluate whether reducing Defendant's sentence by 1-13 months is
 14 warranted. *See 18 U.S.C. § 3582(c)(2); U.S.S.G. § 1B1.10(b)(2)(A); Dillon*, 560 U.S. at
 15 826-27.

16 In unpublished decisions, the Ninth Circuit has held "the amended guideline range
 17 does not include departures." *United States v. Aragon-Rodriguez*, 624 F. App'x 542, 543
 18 (9th Cir. 2015) (unpublished); *see United States v. Ocegueda*, 778 F. App'x 510 (9th Cir.
 19 2019) (unpublished); *United States v. Bishop*, 677 F. App'x 409 (9th Cir. 2017)
 20 (unpublished). However, under 9th Cir. R. 36-3(a), these unpublished dispositions are not
 21 binding authority. In the absence of binding precedent on the matter, courts within this
 22 district have previously calculated defendants' amended guideline ranges both with and
 23 without subtracting Fast Track departures. *See, e.g., United States v. Gonzalez*, 119 F.
 24 Supp. 3d 1266, 1268 (S.D. Cal. 2015) ("a court must back out from the calculation of the
 25 amended Guideline sentence range any departure or variance that was given previously,
 26 except for a Substantial Assistance departure"); *United States v. Aispuro*, No. 11-cr-02286-
 27 DMS, ECF No. 102 (S.D. Cal. 2015) ("Defendant's Base Offense Level would be recast .
 28 .. but he would not receive the benefit of the Fast Track Departure"); *but see, United States*

1 *v. Perez*, No. 13-cr-913-JM, 2017 WL 932139 (S.D. Cal. 2017) (including Fast Track
 2 departure in amended range calculation, but denying the defendant’s motion because the
 3 original sentence was still less than the amended range); *United States v. Nunez-Argumedo*,
 4 No. 13-cr-4483-JM, 2016 WL 6427926 (S.D. Cal. 2016) (same).

5 In *United States v. D.M.*, 869 F.3d 1133 (9th Cir. 2017), the Ninth Circuit considered
 6 whether district courts should include departures when resentencing under U.S.S.G. §
 7 1B1.10(b)(2)(B). This section allows courts to reduce a defendant’s sentence beneath even
 8 the U.S.S.G. § 1B1.10(b)(1) amended guideline range if the defendant provided substantial
 9 assistance to authorities. After analyzing the structure and intent of § 1B1.10 in general,
 10 the *D.M.* court held that “nothing in the guideline or comments to the guideline . . .
 11 preclude[s] a court from considering various departures in a prior sentence when
 12 resentencing a defendant under U.S.S.G. § 1B1.10(b)(2)(B).” *Id.* at 1145. The court
 13 reasoned in part that excluding departures from the calculation inappropriately bars “those
 14 who have additional mitigating circumstances strong enough to merit formal downward
 15 departures equal to or greater than the amendment effects” from benefiting from mitigating
 16 factors during resentencing. *Id.* at 1142.

17 Though the § 1B1.10(b)(2)(B) substantial assistance exception is not at issue here,
 18 the Court finds the *D.M.* court’s reasoning instructive for interpreting § 1B1.10 as a whole,
 19 particularly given the lack of binding authority and inconsistent persuasive authority on the
 20 specific issue in this case. Considering *Dillon*’s mandate that an 18 U.S.C. § 3582(c)(2)
 21 sentence reduction is not a full resentencing, 560 U.S. at 825, including original departures
 22 in recalculation is the best way to leave original “guideline application decisions
 23 unaffected.” U.S.S.G. § 1B1.10(b)(1). Excluding the fast track departure from
 24 Defendant’s amended guideline range would create the same anomaly contemplated by the
 25 *D.M.* court: if the Court were to ignore original departures when calculating the amended
 26 guideline range, defendants with mitigating factors warranting departure would be less
 27 likely to benefit from a sentence reduction than defendants without these factors. Worse,
 28 if the Court reads “leave all other guideline application decisions unaffected” as “ignore

1 original guideline application decisions,” defendants with *aggravating* factors warranting
 2 upward adjustment would benefit *more* from sentence reduction than defendants with
 3 neutral or mitigating factors.

4 Though this Court declined to include a fast track departure in an 18 U.S.C.
 5 § 3582(c)(2) resentencing in *Aispuro* (2014), the Ninth Circuit’s subsequent reasoning in
 6 *D.M.* suggests including departures in amended guideline range calculations is more
 7 consistent with *Dillon* and the overall structure of U.S.S.G. § 1B1.10. Therefore, the Court
 8 now finds that Defendant’s amended guideline range includes his original 4-level § 5K3.1
 9 fast track departure. Defendant’s post-amendment base offense level is 27. After the 4-
 10 level § 5K3.1 fast track departure, the final total offense level is 23. As Defendant is in
 11 criminal history category III, the amended guideline range is 57-71 months. Since
 12 Defendant’s original 70-month sentence is greater than the low end of the amended
 13 guideline range, U.S.S.G. § 1B1.10(b)(2)(A) does not bar reduction. Therefore, the Court
 14 may proceed to the final step of the analysis and evaluate whether any reduction is
 15 warranted.

16 2. Applying 18 U.S.C. § 3553(a) discretionary factors under 18 U.S.C. § 3582(c)(2)

17 After deciding that a defendant is eligible for a sentence reduction under U.S.S.G.
 18 § 1B1.10(a) and calculating the extent of the allowable reduction under U.S.S.G.
 19 § 1B1.10(b), the Court must determine whether any reduction is warranted. *Dillon*, 560
 20 U.S. at 826-27. Under 18 U.S.C. § 3582(c)(2), this final exercise of discretion is informed
 21 by the 18 U.S.C. § 3553(a) factors. *See Dillon*, 560 U.S. at 826.

22 The Sentencing Guidelines are but “one [advisory] factor among several courts must
 23 consider in determining an appropriate sentence.” *Kimbrough v. United States*, 552 U.S.
 24 85, 85 (2007) (citing *United States v. Booker*, 543 U.S. 220, 225 (2005)). In imposing a
 25 sentence, a court may not “presume that the Guidelines range is reasonable,” but must
 26 instead “make an individualized assessment based on the facts presented” as to the just
 27 sentence in each particular case. *Gall v. United States*, 552 U.S. 38, 50 (2007).
 28 Discretionary determinations must reflect the judicial commitment to “consider[ing] every

1 convicted person as an individual and every case as a unique study in the human failings
 2 that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.”
 3 *Koon*, 518 U.S. at 113. Accordingly, § 3553(a) requires courts to go beyond the Guidelines
 4 and consider a variety of factors to arrive at a sentence “sufficient, but not greater than
 5 necessary, to comply with the purposes” of punishment.

6 In this case, Defendant operated a vessel carrying approximately 2,200 kilograms
 7 (over 5,000 pounds) of marijuana. The estimated street value of this quantity of marijuana
 8 at the time of sentencing was between one and three million dollars. When Coast Guard
 9 personnel ordered Defendant to submit for inspection, Defendant failed to yield. He
 10 continued to flee even after a Coast Guard cutter fired a volley of warning shots at his
 11 panga boat. Defendant also threw a GPS unit and a cell phone overboard during the chase.
 12 Coast Guard personnel were only able to end the pursuit by firing shots into the boat’s
 13 engine. The nature and circumstances of the offense, including the large quantity of drugs,
 14 failure to yield, and destruction of evidence, are aggravating factors. *See* 18 U.S.C.
 15 § 3553(a)(1).

16 Additionally, Defendant committed the offense at issue here while on supervised
 17 release after committing a similar crime. In 2012, immigration authorities arrested
 18 Defendant for transporting about fifteen illegal aliens into the United States via panga boat.
 19 As in this case, Defendant attempted to evade arrest following the 2012 offense. He also
 20 admitted to piloting the boat used in that operation. Defendant pled guilty to bringing in
 21 illegal aliens without presentation, 8 U.S.C. § 1324(a)(2)(B)(iii), and was sentenced to 177
 22 days in custody to be followed by a 5-year term of supervised release. Defendant
 23 committed the instant offense in 2013, while serving his term of supervised release.
 24 Defendant’s prior conviction for a similar offense and willingness to reoffend while on
 25 supervised release are aggravating factors. Defendant’s past recidivism suggests that his
 26 sentence should focus on deterring future criminal conduct and protecting the public from
 27 further crimes. *See* 18 U.S.C. § 3553(a)(2).

28 ///

Finally, the Court considers “any pertinent policy statement . . . issued by the Sentencing Commission . . . subject to any amendments” relevant to Defendant. 18 U.S.C. § 3553(a)(5)(A). Defendant seeks relief under Amendment 782, which the Commission issued in part to address overcrowding in federal prisons. U.S.S.G., amend. 782 (2014) (“the Commission considered the amendment an appropriate step toward alleviating the overcapacity of the federal prisons”). In this case, Defendant has already completed his custodial term. Granting the requested reduction would only lower his remaining term of supervised release, which would not serve the goal of reducing prison capacity. Further, reducing Defendant’s term of supervised release would be contrary to the § 3553 goals of promoting respect for the law, deterring future offenses, and protecting the public. The originally imposed 3-year term of supervised release provides enhanced deterrent effect and protects the public from potential recidivism by monitoring Defendant, who has re-offended in the past.

III.

CONCLUSION

16 Defendant is eligible for a sentence reduction under 18 U.S.C. § 3582(c)(2) and
17 U.S.S.G. § 1B1.10(a). The Court is authorized to reduce Defendant's sentence by up to 13
18 months under § 1B1.10(b)(1). However, because of the nature and circumstances of the
19 offense and Defendant's past recidivism, the Court recognizes the need for a period of
20 supervised release sufficient to promote respect for the law, deter future criminal conduct,
21 and protect the public from future crimes. In light of these considerations, the Court finds
22 it necessary to continue supervised release for the original term of 3 years. Accordingly,
23 the Court finds that any reduction in Defendant's sentence is unwarranted. Defendant's
24 motion is **DENIED**.

IT IS SO ORDERED.

26 | Dated: July 21, 2020



Hon. Dana M. Sabraw
United States District Judge